

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:05-CR-72-D
No. 4:12-CV-41-D

DELVECKEO LAMONT GOINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

The United States has withdrawn its opposition to Delveckeo Lamont Goins's motion to vacate his conviction on count two [D.E. 31]. The court has reviewed the entire record and GRANTS the motion to vacate as to count two [D.E. 25]. Goins's conviction on count two [D.E. 23] is VACATED.

Goins pled guilty to count two as part of a plea agreement [D.E. 12]. Pursuant to the plea agreement, the United States moved to dismiss count one at sentencing. See id. ¶ 4a. The court granted the motion and dismissed count one at sentencing [D.E. 23]. The Fourth Circuit's decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), does not impact count one, and the United States wishes to proceed with count one. In light of the plea agreement and changed circumstances wrought by Simmons, the court reinstates count one of the indictment. See Ricketts v. Adamson, 483 U.S. 1, 8–12 (1987); United States v. Maybeck, 23 F.3d 888, 894–95 (4th Cir. 1994). Accordingly, the United States shall release Goins from prison, but shall detain and transport Goins to this district for a detention hearing and further proceedings on count one.

SO ORDERED. This 18 day of December 2012.


JAMES C. DEVER III
Chief United States District Judge